83 - 1631

No. .....

Office - Supreme Court, U.S
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APR 3 1984
ALEXANDER L. STEVAS,

IN THE

Supreme Court of the United States

MARCH TERM, 1984

ALEXIS KNEELAND,

Petitioner,

v.

Bloom Township High School District No. 206,
Marion Baron, Richard M. Carrabine,
Dorothy Dill, Bruce Green, Warren Kurth,
Frank Nehnevay, Eugene Neubauer,
Paul Rietveld, Douglas Treiani,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

SYLVIA K. SMITH
Attorney for Appellant

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Flossmoor, Illinois 60422
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I. Questions Presented

1. In the judicial quest for justice, where the Jurisdictional Statement was timely filed but through an oversight, the Notice of Appeals was not filed, should the United States Supreme Court overrule the Seventh Circuit Court of Appeals' arbitrary and capricious refusal to re-enter its Order so that a timely Notice of Appeals could be filed?

2. Where bias against Petitioner and Judge Marovitz, of the District Court of the Northern District of Illinois, who rendered the initial Summary Judgment for Respondents, was evidenced in the Order of the United States Court of Appeals for the Seventh Circuit upholding the Summary Judgment and in said Court's two-year delay in reaching the aforesaid Order, should said Court be allowed to further thwart justice by refusing to re-enter its aforesaid Order, thus precluding a fair judicial result in this matter.?

3. After four years of litigation, where a blatantly unfair Summary Judgment was reached in the United States District Court for the Northern District of Illinois and said Summary Judgment was upheld in a prejudiced manner, wholly contrary to the facts of the case, and further where the timely filing of a Jurisdictional Statement served as actual notice of appeal, should Petitioner be given the opportunity to file a timely and technically correct appeal to the Supreme Court of the United States through the re-entry of the appellate court's Order?

4. Is the judicial concept of "substance over form" the victim of prejudice at the federal appellate court level and of expediency at the United States Supreme Court level?

5. Where Petitioner has suffered through four years of litigation and unfair bias in the federal court system will the United States Supreme Court protect her right to a fair trial by overruling the appellate court's refusal to re-enter judgment so that a timely appeal through Writ of Certiorari can be filed?

II. Parties

The decision being appealed on Writ of Certiorari was rendered by the United States Court of Appeals for the Seventh Circuit in Petitioner's Motion to Recall the Mandate and Motion to Re-Issue Judgment, denying said motion. The adverse parties below are the following: Bloom Township High School District No. 206, Marion Baron, Richard M. Carrabine, Dorothy Dill, Bruce Green, Warren Kurth, Frank Nehnevay, Eugene Neubauer, Paul Rietveld and Douglas Troiani.

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CODE:

28 U.S.C. 2101(c) . . . . . .

No.....

IN THE

Supreme Court of the United States

OCTOBER TERM, 1983

ALEXIS KNEELAND,

Petitioner,

v.

Bloom Township High School District No. 206,
Marion Baron, Richard M. Carrabine,
Dorothy Dill, Bruce Green, Warren Kurth,
Frank Nehnevay, Eugene Neubauer,
Paul Reitveld and Douglas Troiani,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

Petitioner prays that a writ of certiorari issue to review the January 4, 1984 denial by the United States Court of Appeals for the Seventh Circuit of Petitioner's motions to recall the mandate and for entry of a fresh decree from which a timely appeal by writ of certiorari might be taken.

V. Opinions Below

The June 18, 1981 Opinion of the U.S. District Court for the Northern District of Illinois and the August 24, 1983 Opinion of the U.S. Court of Appeals for the Seventh Circuit are attached hereto at pages respectively of the Appendix.

The United States Court of Appeals for the Seventh Circuit denied Petitioner's Motion to Recall the Mandate. This denial of motion was entered on January 4, 1984 and is attached hereto at page a of the Appendix. Petitioner's Motion to Recall the Mandate and Motion to Re-Issue Judgment are attached hereto at page a of the Appendix.

VI. Jurisdiction

Review is sought of the denial by the United States Court of Appeals for the Seventh Circuit, entered January 4, 1984, of Petitioner's Motion to Recall the Mandate thus preventing the re-entry of judgment which would allow for a timely appeal by writ of certiorari. Petitioner had filed a Jurisdictional Statement on direct appeal to the United States Supreme Court within the 90 days allotted to her. However Petitioner failed to file a Notice of Appeal on the erroneous belief that her Jurisdictional Statement acted as notice of appeal since it afforded actual notice to the United States Court of Appeals for the Seventh Circiut. Petitioner prays that this Court will remand this case to the U.S. Court of Appeals for the Seventh Circuit for entry of a fresh order from which a timely and correct appeal through a writ of certiorari might be prosecuted to the Supreme Court of the United States. The aforesaid denial of motion obliterates justice and is contrary to this Court's holding in *U.S. v. Christian Echoes National Ministry, Inc.*, 404 U.S. 561 (1972) 28 U.S.C. 2101(c).

VII. Statute Involved 28 U.S.C. 2101 (C)

Any other appeal or any Writ of Certiorari intended to bring any judgment or decree in a civil action, suit or proceeding before the Supreme Court for review shall be taken or applied for within 90 days after the entry of such judgment or decree.

A justice of the Supreme Court for good cause shown, may extend the time for applying for a Writ of Certiorari for a period not exceeding 60 days.

VIII. Statement of the Case

Petitioner brought suit against Respondents in 1979 on the grounds of sex discrimination in her dismissal by Respondents as Women's Sports Coordinator of Bloom Trail High School. The United States District Court for the Northern District of Illinois granted a Summary Judgment to Respondents even though Petitioner had established an unrebutted prima facie case, to wit: a) That she is a member of a protected class; b) That she was discharged; and c) that there was disparate treatment from which the court can infer a causal connection between the basis and the discharge.

A full airing of this matter can be found in the Jurisdictional Statement attached hereto at page a of the Appendix.

Subsequent to the aforesaid Summary Judgment Petitioner appealed to the United States Court of Appeals for the Seventh Circuit which, after a two-year delay, proceeded to erroneously uphold the United States District Court's Summary Judgment as set forth in the Jurisdictional Statement attached hereto at page a of the Appendix.

Petitioner then timely filed an appearance, the docket fee, and, with proof of service as prescribed by Rule 28 of the Rules of the Supreme Court of the United States, 40 copies of a printed statement as to jurisdiction which complied with Rule 15 of the Rules of the Supreme Court of the United States.

Under the mistaken belief that the Jurisdictional Statement acted as notice of appeal, Petitioner did not file a separate Notice of Appeal. Thus the Clerk of the Supreme Court of the United States properly refused to docket the case.

Petitioner then filed with the United States Court of Appeals for the Seventh Circuit a Motion to Recall the

Mandate and a Motion to Re-Issue Judgment. Said motions are attached hereto at pages a and a respectively of the Appendix.

The United States Court of Appeals for the Seventh Circuit entered, on January 4, 1984, a denial of Petitioner's Motion to Recall the Mandate, thus quashing Petitioner's Motion to Re-Issue Judgment. It is from this denial of motion which Petitioner now appeals through writ of certiorari. Petitioner now comes before the Supreme Court of the United States and prays that she will not be dead-ended by her attorney's oversight, in her four-year quest for judicial relief from an injustice which was perpetrated upon her.

IX. Argument and Authorities

Petitioner asks simply for her day in court. As outlined in the attached Jurisdictional Statement, at page a of the Appendix, the sexual discrimination against Petitioner has been blatant. Seemingly it is within this Court's interest to protect Petitioner from being scapegoated on a sexual basis by the high school administrators and school board members by whom she was employed as the Women's Sports Coordinator; and further within this Court's interest to protect Petitioner from unfair rulings at the U.S. District Court and U.S. Appellate Court levels.

In the case of *U.S. v. Christian Echoes National Ministry, Inc.*, 404 U.S. 561 (1972), the United States Supreme Court dismissed the government's appeal under 28 U.S.C. Section 1252. In a per curiam opinion expressing the unanimous views of the Court, it was held that the Supreme Court lacked jurisdiction under 28 U.S.C. Section 1252 because the decision below did not hold any part of the Internal Revenue Code to be unconstitutional on its face or as applied, stating, "The judgment is vacated and *the case is remanded to the District Court for the entry of*

a fresh decree, so that the appellant may appeal to the United States Court of Appeals for the Tenth Circuit." *U.S. v. Christian Echoes National Ministry, Inc.*, 404 U.S. 561, 30 L.Ed.2d 716, 92 S.Ct. 663 (1972).

This same view was expressed by the United States Supreme Court in cases such as the following: *Gonzalez v. Automatic Employees Credit Union*, 419 U.S. 90, 42 L.Ed.2d 249, 95 S.Ct. 289 (1974); and *Query v. U.S.*, 316 U.S. 486, 62 S.Ct. 1122, 86 L.Ed. 1616 (1941).

In the case of *Donovan v. Richland County Association for Retarded Citizens*, 454 U.S. 389, Justice Powell, with whom Justice Blackman joins, concurring in part and dissenting in part, stated "I concur in the Court's decision to vacate the judgment and opinion of the Court of Appeals. But I would not simply dismiss the government's appeal. Rather I would remand the matter to the district court for entry of a fresh decree from which a timely appeal might be taken." Justice Powell went on to state, "Just because the case already has been delayed too long does not require that we should compound the error by leaving the case in a posture defeating all review... Twenty-eight U.S.C. Section 1252 is designed to expedite review by this Court, not defeat it. Because the Court's disposition defeats the fundamental purpose of Section 1252, I dissent." *Donovan v. Richland County Association for Retarded Citizens*, #87-255, 454 U.S. 389, 102 S.Ct. 713.

The Supreme Court of the United States has established the precedent that where the citation has been accidentally omitted, the appeal will not be dismissed until an opportunity to give required notice has been furnished. *Richardson v. Green*, 9 S.Ct. 443, 130 U.S. 104, 32 L.Ed. 872 (1889); *Brown v. McConnell*, 8 S.Ct. 559, 124 U.S. 489, 31 L.Ed. 495.

X. Conclusion

Had the United States Court of Appeals for the Seventh Circuit entered a fresh Order from which a timely and technically correct appeal could be drafted, said Court of Appeals would have shown its good faith concern for justice. However, with the appellate court's refusal to simply re-enter judgment, Petitioner has viewed a disdain for justice throughout the federal judicial system.

The Supreme Court of the United States is now being asked by Petitioner to avoid a decision which would defeat the basic purpose of our judicial system. Thus Petitioner prays that this Court will remand the case at hand to the United States Court of Appeals for the Seventh Circuit for the entry of a fresh Order from which a timely and correct Writ of Certiori may be filed in order to further the primary goal of allowing to Petitioner a fair trial.

Respectfully submitted,

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XI. Appendix

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

Received June 18, 1981

ALEXIS KNEELAND, Plaintiff,	)	
v.	)	
	)	NO. 79 C 3601
BLOOM TOWNSHIP HIGH SCHOOL DISTRICT NO. 206, et al.,	)	
Defendants.	)	

MEMORANDUM OPINION

Cross-Motions For Summary Judgment

Plaintiff Alexis Kneeland commenced this action pursuant to 42 U.S.C. § 1983 alleging employment related sex discrimination. Defendants are Bloom Township High School, District No. 206 (the "District"); Eugene Neubauer, the principal of Bloom Trail High School (Bloom Trail), a school within the District; Dr. Richard Carrabine, superintendent of the District; and the individual board of education members of the District at the time of plain-tiff's alleged discriminatory treatment. Plaintiff is a tenured faculty member of the District employed at Bloom Trail. Plaintiff's original complaint was cast in terms of alleged violations of Title IX of the Education Amendments of 1972, 20 U.S.C. §§ 1681-86, and the regulation promulgated thereunder, 45 C.F.R. § 86. That complaint was dismissed pursuant to a motion made under Fed.R.Civ.P. 12(b) (6). *Kneeland* v. *Bloom Township High School, District No. 206*, 484 F. Supp. 1280 (N.D. Ill.

1980). Plaintiff then recast her claim in terms of asserted violations of due process, equal protection, 42 U.S.C. § 1985, and state statutory and common law. In a memorandum opinion issued on September 18, 1980, the Court dismissed all of the claims asserted in plaintiff's amended complaint except her claims under the equal protection clause and Ill. Rev. Stat. ch. 122, § 24-4. Now pending before the Court are the parties' cross-motions for summary judgment. Fed.R.Civ.P. 56. For the reasons set forth below, the Court grants defendants summary judgment on plaintiff's equal protection claim and consequently dismisses plaintiff's state statutory claim for want of subject matter jurisdiction.

The undisputed facts of this action are as follows. Plaintiff has been a tenured physical education teacher at Bloom Trail since at least January 1979. In January 1979, plaintiff in addition held several extra-curricular positions, including that of Women's Sports Coordinator. Plaintiff's term of employment as Women's Sports Coordinator are set forth in a "contract salary notice." The job description contained therein provides that: "The Women's Sports Coordinator will have responsibility for the girls (sic) interscholastic program and will be responsible to the athletic director for authorization and supervision." In January 1979, the athletic director at Bloom Trail was Mr. Daniel Candiano. Also among the athletic director's duties was responsibility for the planning and organizing of Bloom Trail's athletic facility use.

A basketball game between the Bloom Trail boys' basketball team and the boys' basketball team of another high school within the district was held at Bloom Trail after school hours on January 30, 1979. On January 26, 1979, Candiano instructed plaintiff to make a certain number of lockers then being used by girls available on January 30 for use by members of the visiting basketball team scheduled to play in the game on that date. Other locker space was available for use by the visiting team. Candiano's motivation for making the request, which plaintiff does not dispute, was for security purposes,

based upon past experience with games between the two teams, in the event the visiting team had to be expeditiously removed from the facility. Plaintiff refused to have the girls' lockers made available, at least in part because she contested Candiano's judgment that those particular lockers were necessary to achieve the security goals sought by him. Plaintiff admits, however, that visiting boys' football teams generally use the girls' athletic locker room. Plaintiff's Deposition, p. 36.

By the beginning of the school day on January 30, 1979, the day of the game, plaintiff had yet to have the girls' lockers vacated as instructed by Candiano. During that day, the girls began to remove their belongings from their lockers pursuant to instructions from some women coaches, other than plaintiff, who Candiano had also apparently told to have the lockers made available. When plaintiff discovered that the girls were vacating their lockers, she instructed them to place their things back into the lockers and leave them there. Plaintiff's Deposition, pp. 48-49. After the school day, the assistant principal of Bloom Trail instructed plaintiff to make the lockers available and she responded that she could not since the students had already gone home. When the visiting basketball team arrived, Candiano cut the locks off the girls lockers, removed their belongings, and left them unattended in the locker room. The girls were immediately provided with new locks by the school.

Thereafter, Superintendent Carrabine requested that Principal Neubauer to submit a report on the incident. On February 5, 1979, Neubauer submitted a memorandum to Carrabine. The memorandum was based upon conferences Neubauer had with both Candiano and plaintiff. The memorandum outlines the asserted justifications for both Candiano's and plaintiff's behavior, but draws no explicit conclusions as to the propriety of their behavior. The memorandum simply concludes that the incident was a product of a lack of cooperation, toting that:

> It is unfortunate when accessible and good quality athletic facilities are not shared for the safety and convenience of home and visiting teams.
>
> It is evident that we need to continue to work on communication, on procedures and routines, on responsibility and authority, and on all other elements that are so important to a well run and effective program at any level and in any area of the school.

Plaintiff's Deposition Exhibit 6.

Based upon the facts contained in the memorandum, Carrabine removed plaintiff from her position of Women's Sports Coordinator by way of a letter dated February 6, 1979. The letter indicates that Carrabine's decision was based upon his determination that plaintiff's conduct amounted to insubordination and uncooperative and disruptive behavior.

Sometime in early February, plaintiff submitted to Neubauer a list of personal articles of the girls whose lockers were broken into by Candiano, totaling $396.50 in estimated value, that plaintiff claimed were lost or stolen as a result of Candiano's action. Upon receiving this list, Neubauer made several attempts to obtain from plaintiff the names of girls whose property allegedly had been lost or stolen. Plaintiff failed to cooperate. Apparently, no action was ever taken to replace or compensate for the allegedly lost or stolen property. Nor was Candiano ever disciplined for breaking into the girls' lockers.

Plaintiff sought to have overturned Carrabine's decision to remove her from her position as Women's Sports Coordinator by filing a grievance with the District's Board of Education pursuant to a collective bargaining agreement in effect between the District and its teachers. While plaintiff's grievance was pending the District posted a notice, as required by the collective bargaining

agreement, advising that the District was receiving applications for the position of Women's Sports Coordinator at Bloom Trail. In response, the bargaining representative of the bargaining unit of which plaintiff is a member posted a notice discouraging members of the union from applying for the position while plaintiff's grievance was pending. Only one applicant was received, a qualified male, who was hired while plaintiff's grievance was still pending. The Board by a letter dated June 25, 1979 informed plaintiff that it had determined that plaintiff's loss of the position of Women's Sports Coordinator did not occasion any violation of the applicable collective bargaining agreement. The Board's determination was made without the benefit of any formal hearings, and none were apparently required under the terms of the agreement. Plaintiff then commenced the instant action.

The principles that guide a federal court when ruling upon a motion for summary judgment are well-settled. Summary judgment shall not be granted unless the record reveals "that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed.R.Civ.P. 65(c). The burden of showing the propriety of summary judgment relief rests with the movant. *First National Bank Company of Clinton, Illinois* v. *Insurance Company of North America*, 606 F.2d 760 (7th Cir. 1979). Further, all inferences that may be drawn from the evidence shall be drawn in favor of the party against whom summary judgment relief is sought. *Wang* v. *Lake Maxinhall Estates, Inc.*, 531 F.2d 832, 835 (7th Cir. 1976). When, however, a summary judgment movant has made a threshold showing of the propriety of summary judgment, the adverse party may not defeat the motion by merely relying upon the allegations or denials of his pleadings. Fed.R.Civ.P. 56(e); *First National Bank Company of Clinton, Illinois* v. *Insurance Company of North America*, 606 F.2d at 767.

Hence, the narrow question now before the Court is whether the record presents any factual question material to plaintiff's claim of discrimination. The material inquiry

in employment discrimination cases, stated simply, is whether an employer has treated the plaintiff less favorably than others for impermissable reasons, such as, for example, sex. *See Furnco Construction Corp.* v. *Waters*, 438 U.S. 567, 577 (1978). To prevail on such a claim of discriminatory treatment, a plaintiff must establish purposeful discriminatory treatment, a plaintiff must establish purposeful discriminatory treatment. *Grano* v. *Department of Development of City of Columbus*, 637 F.2d 1073, 1081-82 (6th Cir. 1980); *Mescall* v. *Burrus*, 603 F.2d 1266, 1271 (7th Cir. 1979). Moreover, a plaintiff who establishes that an impermissable factor, such as sex, was a motivating factor behind a decision affecting his employment may nonetheless not prevail, at least when proceeding under an equal protection theory, if the challenged decision would have been made in the absence of consideration of the impermissable factor. *Village of Arlington Heights* v. *Metropolitan Housing Development Corp.*, 429 U.S. 252, 270-71 n.21 (1977).

Claims of discriminatory treatment, because they involve questions of intent and motivation, will rarely lend themselves to disposition by way of the summary judgment process. *See, e.g., Theobald* v. *Botein, Hays, Sklar & Herzberg*, 493 F. Supp. 1, 5 (S.D.N.Y. 1979). The undisputed facts in the record of the instant case, however, clearly make plaintiff's claim appropriate for summary judgment relief in defendants' favor. Indeed, the record is completely devoid of any factual disputes which if ultimately resolved in plaintiff's favor could fairly give rise to an inference that plaintiff's removal from the position of Women's Sports Coordinator was due to sex discrimination. Instead, the record indicates only that the sole cause for plaintiff's termination was conduct by her that Carrabine deemed to amount to insubordination. Plaintiff violated explicit instructions from one with supervisory authority over her and, moreover, enlisted the aid of other teachers and students in her act of insubordination. A factual dispute as to whether Candiano's decision to use the girls' lockers was wise or prudent is not material to plaintiff's claim.

Plaintiff attempts to make much of the fact that Candiano, a male, was not disciplined for his part in the locker incident, which she alleges caused the loss of the property of several girls, while she, a female, was disciplined. The Court finds, however, that this fact, standing alone, does not support her claim of discrimination. Candiano and plaintiff were not in such similar circumstances so as to reasonably allow a comparison of defendants' treatment of Candiano with their treatment of plaintiff with respect to the locker incident. Candiano's participation in the incident was in an administrative and supervisory capacity, while plaintiff's was that of a teacher expected to abide by Candiano's decision, or at least timely appeal it through the proper channels. While the Court does not mean to express any support for Candiano's decision, he was at most guilty of exercising poor judgment pursuant to his discretionary authority, and not of disobedience of an explicit directive as was plaintiff. As to the alleged loss of some girls' property, the Court only notes that Neubauer did attempt an investigation into this aspect of the incident, an investigation that was somewhat stymied by plaintiff's lack of cooperation.

Plaintiff also argues that both the fact that neither Neubauer nor Carrabine made a detailed investigation of the incident and the fact that the board held no hearings support her claim. As to the former, the point of plaintiff's argument is lost upon this Court since plaintiff does not dispute that Neubauer or Carrabine was aware of the facts surrounding the incident. Concerning the board's failure to conduct hearings, plaintiff does not assert that it was either required to hold any or that it customarily does when deciding grievances brought pursuant to a collective bargaining agreement.

Plaintiff contends that the fact she was given no warning before she was removed from the position of Women's Sports Coordinator suggests that she was treated discriminatorily. Plaintiff, however, has summoned forth no evidence that teachers within the District are usually given warnings before more severe disciplinary action is taken.

Further, plaintiff points to the fact that the District employs more male coaches than female coaches. A bald showing of such statistical disparity is insufficient to raise an inference of discrimination. *Grano* v. *Department of Development of City of Columbus*, 637 F.2d at 1078.

Finally, the Court feels compelled to pause and voice a few observations about this piece of litigation, observations which the Court hastens to add did nothing to color its resolution of the legal questions presented herein. Section 1983 was enacted to make available a federal forum for persons whose federal rights have been abridged by state actors. *See generally Monell* v. *New York City Department of Social Services*, 436 U.S. 658, 685 (1978). This case may well involve many things, including apparently a certain amount of pettiness and exercise of poor judgment by some of the parties concerned on both sides. What this case certainly does not involve, however, is a viloation of any of plaintiff's federally protected rights. Rather, this case is but another example of a conflict that should have been, and in the past likely would have been, resolved extra-judicially at the community level in the spirit of compromise and reconciliation. What is particularly distressing to the Court about this case is that compromise and reconciliation were not exercised by public school officials so as to serve as examples to the school children within the District. Further, if they had done so they could have avoided a considerable expenditure of public funds, a not inconsequential consideration when today most public school systems seem to be suffering from some sort of pecuniary illness and are being undermined by defections to private schools. Indeed, the defendants in this action even rebuffed the Court's offering of its good offices to arrive at an amicable resolution of this matter. In short, this dispute may well have been resolved less acrimoniously at the different levels it presented itself within the District, but section 1983 does not authorize it to be now resolved in a federal courtroom.

In sum, the Court grants defendants' motion for summary judgment on plaintiff's equal protection claim and denies plaintiff's motion. There being no federal claim to which plaintiff may pend her state law claim under Ill. Rev. Stat. ch. 122, § 24.4, that claim is hereby dismissed without prejudice. Fed.R.Civ.P. 12(h)(3). Accordingly, judgment shall be entered in defendants' favor on plaintiff's equal protection claim and this action shall be dismissed. An appropriate order shall enter.

ENTER:

Abrahem Lincoln Marovitz
JUDGE

DATED: June 18, 1981

United States Court of Appeals

For the Seventh Circuit
Chicago, Illinois 60604

January 3, 1984

ENTERED
ON DOCKET
January 4, 1984

Before
HON. WILBUR F. PELL, JR., Circuit Judge

ALEXIS KNEELAND, Plaintiff-Appellant	)	Appeal from the United States District Court for the Northern District of Illinois, Eastern Division
No. 81-2127 vs.	)	
BLOOM TOWNSHIP HIGH SCHOOL DISTRICT NO. 206, et al., Defendants-Appellees	)	No. 79 C 3601 Judge Abraham L. Marovitz

On consideration of the "MOTION TO RECALL THE MANDATE" filed herein on December 22, 1983, by counsel for the plaintiff-appellant,

IT IS ORDERED that said motion is hereby DENIED.

United States Court of Appeals

FOR THE SEVENTH CIRCUIT

ALEXIS KNEELAND, Plaintiff,	)	
	)	Cause No. 81-2127
vs.	)	
BLOOM TOWNSHIP HIGH SCHOOL DISTRICT NO. 206, et al., Defendants.	)	

MOTION TO RECALL THE MANDATE

Now comes Plaintiff-Appellant through her attorney and respectfully requests that this Court recall the mandate. In support of this motion Plaintiff-Appellant states as follows:

1. Judgment was entered by this Court on August 24, 1983 affirming the District Court's order.

2. Plaintiff-Appellant filed forty copies of a Jurisdictional Statement with the United States Supreme Court, along with the proper filing fee; she also filed three copies of said Jurisdictional Statement with this Court and served three copies of said Jurisdictional Statement upon opposing counsel, all within the ninety-day period statutorily allotted to her.

3. Through an oversight, Plaintiff-Appellant's attorney failed to file a Notice of Appeal, under the erroneous belief that the Jurisdictional Statement acted as notice of appeal.

4. Plaintiff-Appellant prays that the United States Court of Appeals for the Seventh Circuit will graciously Recall the Mandate to allow for Plaintiff-Appellant's Motion to Re-issue Judgment, giving Plaintiff-Appellant's attorney the opportunity to correct the aforestated technical fault.

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United States Court of Appeals

FOR THE SEVENTH CIRCUIT

ALEXIS KNEELAND,	)	
Plaintiff,	)	
	)	Cause No. 81-2127
vs.	)	
BLOOM TOWNSHIP	)	
HIGH SCHOOL	)	
DISTRICT NO. 206, et al.,	)	
Defendants.	)	

MOTION TO RE-ISSUE JUDGMENT

Now comes Plaintiff-Appellant through her attorney and prays that this Court re-issue judgment. In support of this motion Plaintiff-Appellant states as follows:

1. Judgment was entered by the United States Court of Appeals for the Seventh Circuit on August 24, 1983.

2. Plaintiff-Appellant filed forty copies of a Jurisdictional Statement with the Clerk of the United States Supreme Court, along with the proper filing fee; she also filed three copies of said Jurisdictional Statement with the Clerk of the United States Court of Appeals for the Seventh Circuit and served three copies of said Jurisdictional Statement upon opposing counsel, all within the ninety-day period statutorily allotted to her.

3. Through an oversight, Plaintiff-Appellant's attorney failed to file a Notice of Appeal, under the erroneous belief that the Jurisdictional Statement acted as notice of appeal.

4. Plaintiff-Appellant respectfully asks the United States Court of Appeals for the Seventh Circuit to re-issue Judgment giving Plaintiff-Appellant's attorney the opportunity to correct the aforestated technical fault so that Plaintiff-Appellant will not be penalized for her attorney's oversight.

5. Plaintiff-Appellant prays that substance will triumph over form with the result that the United States Court of Appeals for the Seventh Circuit will magnanimously allow her access to the entirety of our judicial system through a re-issuance of its Judgment.

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Attorney for Plaintiff-Appellant

No. .....

IN THE

Supreme Court of the United States

OCTOBER TERM, 1983

ALEXIS KNEELAND,

Appellant,

v.

Bloom Township High School District No.206,
Marion Baron, Richard M. Carrabine,
Dorothy Dill, Bruce Green, Warren Kurth,
Frank Nehnevay, Eugene Neubauer
Paul Rietveld, Douglas Troiani,

Appellees.

APPEAL FROM THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

JURISDICTIONAL STATEMENT

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I. Questions Presented

1. Does a public high school district, being federally funded, violate a female Women's SportsCoordinator's rights under Title IX of the Education Amendments of 1972, 20 U.S.C. Sec. 1681, when it fires her for promoting the Title IX right of her female athlete's while allowing a male athletic director to go unpunished for needlessly and maliciously chopping off 19 female athlete's locks and failing to protect the personal property within the lockers which he broke into?

2. Does the equal protection clause of the Fourteenth Amendment to the United States Constitution prohibit a federally funded public high school from firing the Women's Sports Coordinator for refusing to allow the male Athletic Director to have forty female athletes remove their possessions and locks from the overcrowded Women's Athletic Locker Room in order to allow a visiting boy's basketball team to take over that locker room when there were at least two other locker rooms in the building with sufficient empty locker space in each, which were more accessible, safer and more convenient for the visiting team?

3. In a 42 U.S.C. Sec. 1983 cause of action, is a prima facie case established where a) appelant, a female, is a member of a protected class; b) she was discharged; c) there was disparate treatment between appellant, a Women's Sports Coordinator, and the Athletic Director from which the Court can infer a causal connection between the basis and the discharge?

4. Is there a violation of Appellant's Fourteenth Constitutional Amendment rights of equal protection and due process when a federally funded public high school district hires a male as Women's Sports Coordinator while Plaintiff's grievance procedure was pending?

5. Does the failure to investigate and hold a hearing as to the circumstances surrounding Plaintiff's dismissal as Women's Sports Coordinator, a position which she had held

with written contract for four years, since the inception of the school as a four-year high school, violate Plaintiff's Due Process right under the Fourteenth and Fifth Amendments to the United States Constitution?

6. In a suit alleging a violation of rights pursuant to 42 U.S.C. Sec. 1983, Title IX of the Education Amendments of 1972, the due process clause of the Fifth Amendment and the equal protection and due process clauses of the Fourteenth Amendment to the United States Constitution, is a Summary Judgment in favor of Defendants— Appelees precluded where deposition testimony, taken under oath, established the following: a) Appelant had done a consistently excellent job as Women's Sports Coordinator, responsible for the girls' athletic program; b) In order to protect the Title IX (of the Education Amendments of 1972) rights of ther athletes, Appellant refused the request of the Athletic Director, Daniel Candiano, to use the overcrowded Women's Athletic Locker Room for a visiting boys' basketball team; c) It would have been necessary for forty girls to remove their belongings and then bring them all back the next day, while there were at least two other locker rooms in the same building with a sufficient number of empty lockers in each, which were safe, more secure and more accessible to the visiting boys' basketballl team than the Women's Athletic Locker Room; d) The Athletic Director, several days after his initial request, chopped off nineteen girls's locks without consulting the school principal, Defendant Neubauer, even though the Athletic Director was aware of the available locker rooms; e) Due to the Athletic Director's negligent failure to properly protect the personal belongings within the lockers, $396.00 worth of personal property was lost or stolen; f) No investigation was made as to the break-in of the girls' lockers; g) Defendant Neubaur admitted in his deposition that the sole source of his report on the incident was the Athletic Director who had chopped off the locks; h) Defendant Carrabine, the District Superintendent admitted in his deposition that although he was aware that the primary source of Defendant Neubauer's report was the Athletic Director, he made no investigation into the matter and dismissed Appellant

from her position as Women's Sports Coordinator on the strength of Defendant Neubauer's report; i) The Defendant School Board members hired a male Women's Sports Coordinator while Appellant's Grievance Procedure was pending; j) No hearing was held in regard to the circumstances surrounding Appellant's dismissal, as evidenced by the Grievance Denial letter attached hereto at page 2a of the Appendix; k) Seven out of eleven coaches of girls' athletics teams are men, while none of the coaches of boys' athletic teams are women at Bloom Trail High School; m) The Athletic Director was in no way reprimanded for needlessly and maliciously breaking into nineteen girls' lockers?

II. Parties

The decision appealed was rendered by the United States Court of Appeals for the Seventh Circuit in Appellant's appeal from a Summary Judgment granted in favor of Defendants by the United States District Court for the Northern District of Illinois, Eastern Division. The adverse parties below are the following: Bloom Township High School District No. 206, Marion Baron, Richard M. Carrabine, Dorothy Dill, Bruce Green, Warren Kurth, Frank Nehnevay, Eugene Neubauer, Paul Rietveld and Douglas Troiani.

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No. . . . . .

IN THE

Supreme Court of the United States

OCTOBER TERM, 1983

ALEXIS KNEELAND,

Appellant.

vs.

BLOOM TOWNSHIP HIGH SCHOOL DISTRICT NO. 206, MARION MARION BARON, RICHARD M. CARRABINE, DOROTHY DILL, BRUCE GREEN, WARREN KURTH, FRANK NEHNEVAY, EUGENE NEUBAUER, PAUL REITVELD and DOUGLAS TROIANI,

Appellees.

ON APPEAL FROM THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

JURISDITIONAL STATEMENT

IV. Opinions Below

The unpublished Order of the United States Court of Appeals for the Seventh Circuit, dated August 24, 1983, is attached hereto at page 5a of the Appendix.

V. Statement of Jurisdiction

A. Nature of Proceeding and Jurisdictional Basis

This appeal involves the denial of appelant's appeal to overturn an erroneous decision of the United States

District Court for the Northern District of Illinois, Eastern Division.

This case came before the United States Court of Appeals for the Seventh Circuit as the result of substantive errors which the District Court made in its findings and conclusions which were unsupported by, or contrary to, the evidence.

Appellant brought suit in the United States District Court under 42 U.S.C. Sec. 1983 due to a breach, by Appellees of 1) her Fourteenth Amendment rights to due process and equal protection; 2) her right to due process pursuant to the Fifth Amendment; 3) her right to equal treatment under Title IX of the Education Amendments of 1972, 20 U.S.C. 1681, as enumerated in the Code of Federal Regulations, Title 45 Sec. 86 et seq. prohibiting sex discrimination in public schools; and 4) her rights pursuant to state statute: Ill. Rev. Stat. Ch. 122 Sec. 24 which prohibits the sex discrimination "of any person in connection with his employment or assignment . . .," and Ill. Rev. Stat. Ch. 122 Sec. 24-4 which allows for specific damages for sex discrimination.

B. Errors Manifested in the District Court's Order of June 18, 1981

1. The following substantive error concerns a finding by the court which is unsupported by the evidence: "Candiano's motivation for making the request, *which Plaintiff does not dispute*, was for *security purposes*, based upon past experience with games between the two teams, in the event the visiting team had to be expeditiously removed from the facility," page 3 Memorandum Opinion, Cross-Motions for Summary Judgements, June 18, 1981. The above statement is fallacious in that there existed a concession stand area[1] directly outside of the Women's Athletic Locker Room in which Candiano chopped off nineteen locks. Thus in the event of a riot, the visiting boys

[1]Page 11 of the January 29, 1983 deposition of Clyde Wesley Mason, the coach of the visiting boys basketball team, who accompanied the said team to Bloom Trail High School on the evening of the break-in.

basketball team would have been trapped in this locker room, for one of the exits from this locker room led to the packed concession stand area and the only other exit led out through the packed fieldhouse. This is probably the most *insecure* locker room which the visiting boys basketball team could have used that evening. Plaintiff has never at any time or in any document agreed that the Women's Athletic Locker Room was used for "security purposes." Over and over again Plaintiff has asserted that Candiano's demand to use the fully occupied Women's Athletic Locker Room, when other safe, secure, accessible and unoccupied space was available in any one of two other locker rooms situated right near the entrance and exit actually used by the visiting team, was arbitary, unnecessary, harassing, discriminatory, and contrary to the Title IX of the Education Amendments of 1972 rights of the women athletes, rendering Plaintiff's refusal justified and rendering Defendants' inaction with respect to the Athletic Director, Candiano, negligent.[2]

The court's error in terming Candiano's motive for breaking into nineteen locks "for security purposes" is reversible since it dilutes the malicious, discriminatory and criminal character of this Athletic Director's actions. In fact, Candiano admitted in his disposition on page 11 that he was aware, at the time of the break-in, that other locker rooms with direct access to the fieldhouse and with unoccupied lockers were available. Thus to chop off nineteen locks and fail to protect the personal items within the lockers when no security motive existed, was at best negligent and malicious destruction of property. The school board had a duty to punish the Athletic Director for this negligence[3] but failed to do so, choosing instead to scapegoat the female athletic administrator, the Women's Sports Coordinator, thereby creating a situation in which

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[2]Plaintiff's Reply to Defendant's Response to Plaintiff's Motion for Summary Judgement filed 5.12.81, page 4; Plaintiff's Response to Defendant's Motion for Summary Judgment, filed 4/24/81, pages 1,2, & 3; Plaintiff's Trial Brief, filed 4/10/81, pages 1,2,5,9,10,11 & 12

[3]Ill. Stats. Ch. 122, Section 10-22.4

there was disparate treatment afforded to the two athletic administrators along sexual lines.

2. The second error committeed by Judge Marovitz concerns his misleading and irrelevant statement of page 3: "Plantiff admits, however, that visiting boys' football teams generally use the girls' athletic locker room. Plaintiff's Disposition, page 36." In Plaintiff's Depostion, page 39, it was established that *during the football season there were empty lockers available in the women's athletic locker room* since only one or two girls' teams were using that locker room during that season. Further the football games were played outside and the visiting football teams entered and exited from the school building near the Women's Athletic Locker Room for the purpose of changing clothes, and since the games were played outside, the concession stand just outside the Women's Athletic Locker Room door was not in use. Thus, the Women's Athletic Locker Room was the safest and most convenient for the visiting football teams to use during the football season and there was no Title IX violation since *female students didn't have to remove their personal belongings from any of the lockers, because plenty of empty lockers* were available to the visiting team. Thus whether or not visiting boys' football teams use the Women's Athletic Locker Room during football season *is irrelevant* to the situation at hand where (a) the visiting team entered and left the school building at the opposite end of the school, near available locker rooms, (b) a concession stand area made it unsafe for a visiting team to use the Women's Athletic Locker Room, and (c) every single locker in the Women's Athletic Locker Room at the time of the incident was occupied by two or three female athletes. However, the statement on the football usage in Judge Marovitz's Opinion created the illusion that Plaintiff's decision was arbitrary and insubordinate rather than well grounded in her duty to protect her students' Title IX rights and not to allow her female athletes to be harassed and inconvenienced at the whim of the Athletic Director.

That Judge Marovitz would make such a misleading and irrelevant statement in his Opinion is seemingly evidence

of a definite bias on his part.

3. On page 4 of Judge Marovitz's Memorandum Opinion, the judge states that Defendant Neubauer submitted a report in the form of a memorandum, of the incident to the superintendent, Defendant Carrabine: "The memorandum was based upon conferences Neubauer had with both Candiano and Plaintiff." Judge Marovitz failed to state that according to Defendant Neubauer's Desposition testimony, on page 22, his *sole source* for this report was Daniel Candiano, the man who had chopped off the locks. Thus within the report Defendant Neubauer alluded to and then refuted Plaintiff's position as dictated by Candiano. This was a one-sided report which lacked any semblance of investigation or fairness. It did not even mention the fact that $396.00 worth of personal possessions belonging to the female athletes were lost of stolen as a result of Candiano's negligence.

Again, Judge Marovitz has misrepresented the evidence before him in a light most unfavorable to Plaintiff contrary to the dictates of a Motion for summary judgment, leading one further toward the conclusion of bias on his part.

4. Another substantive error was committed by Judge Marowitz when he falsely stated on page 6 of his Opinion: "*While Plaintiff's grievance was pending* the District posted a notice, *as required by the collective bargaining agreement*, advising that the District was receiving applications for the position of Women's Sports Coordinator." *Nowhere* in the collective bargaining agreement or in any of Defendant's Briefs is it asserted that the District shall post such a notice while a grievance is pending. This statement by Judge Marovitz is a *complete and utter fabrication* made for the purpose of covering up the starkly discriminatatory nature of the Defendant School District which hired a male, who had no prior contact with the the women's athletic program, as Women's Sports Coordinator while Plaintiff's grievance procedure was still pending and after the Faculty Association posted a notice requesting that members of the union *not apply* for Plaintiff's position *until the grienvance procedure had terminated.*

5. Judge Marovitz asserts on page 8 that "the record indicates only that the sole cause for Plaintiff's termination was conduct by her that Carrabine deemed to amount to insubordination." In fact *no* Defendant made any investigation into the incident. Therefore it would have been *impossible* for Defendent Carrabine to have fired Plaintiff on the basis of insubordination or on any other legitimate basis without comprehending, through investigation, the true nature of the demand for that locker room, which Plaintiff refused. Thus the claim of insubordination must be construed as nothing more than a pretext for sex discrimination. In fact that demand for the Women's Athletic Locker Room was *not* based on security or necessity since in case of a riot it would have been a tragic choice, as the visiting team would have been trapped in a locker room with a concession stand area at one door and the fieldhouse at the other. Plaintiff's refusal was justified and, far from insubordinate, it was necessitated by Title IX of the Education Amendments of 1972 and by her administrative responsibility as stated in her contract, for the welfare and preservation of the rights of the female athletes at Bloom Trail High School. Clearly, to allow these girls to be thrown out of their lockers at the whim of the Athletic Director when other safer, more convenient and unoccupied locker space existed in the building is contrary to the essence of Title IX which provides that girls shall enjoy equal locker room facilities to that of boys.

.6 Judge Marovitz creates another fabrication at the bottom of page 9 when he states that Plaintiff's argument that neither Defendant Neubauer nor Defendant Carrabine made an investigation "is lost upon this court since *Plaintiff does not dispute that Neubauer or Carrabine was aware of the facts surrounding the incident.*"

On the contrary, Plaintiff has *repeatedly* asserted that since both of the aforesaid Defendants *failed to investigate the events surrounding the incident of the chopped locks, neither of them was in a position to know* whether Plaintiff's actions amounted to insubordination or to the admirable

administration of her duty and responsibilities to her students. Thus to label her action "insubordination" *without being aware* of the facts surrounding the incident, must be construed as merely a pretext for sex discrimination[6]. In fact, subsequent to Plaintiff's dismissal, the true facts were brought to Defendant Carrabine's attention and he chose to ignore them.

7. Contrary to Judge Marovitz's assertion on pages 9 and 10 of his Opinion that Plaintiff does not assert that the school board was required to hold any hearing, Plaintiff stated in paragraph 2 of Plaintiff's Reply to Defendants' Response to Plaintiff's Motion for Summary Judgment that "the duty of the board to investigate results from the school board's authority, as stated in the board members' depositions, to overturn a discharge by the superintendent. The Defendant school board members, individually and sitting as a whole, negligently failed to exercise that authority by their unreasonable failure to investigate the matter even after it became apparent to each of them that there were major discrepancies between the facts as presented on the one hand by the principal, Defendant Neubauer, and the superintendant, Defendant Carrabine, and on the other hand by the events as they actually occurred."

C. Error in the U.S. District Court's Dismissal of Plaintiff's Cause of Action as to Title IX of the Education Amendments of 1972, 20 U.S.C. Sec. 1681.

Judge Marovitz denied Plaintiff's sex discrimination claim under Title IX of the Education Amendments of 1972, 20 U.S.C. Sec. 1681, holding that Title IX does not apply to employment cases unless there is specific federal funding of the program of employment involved in the

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[6]Plaintiff's Trail Brief, paragraphs 4, 5, pages 3,4. Plaintiff's Response to Defendant's Motion for Sumary Judgment filed 4.24.81, p. 1. Plaintiff's Motion for Sumary Judgment filed 5/12/81, p. 2 at top and middle.

case. Thus Judge Marovitz denied the validity of the Code of Federal Regulations, Title 45 Sec. 86. This decision is contrary to the holding of the United States Supreme Court on May 17, 1982 in the case of *North Haven Board of Education, et al v. Bell 629 f. 2d 773, 80-986CA2, 50 L.W. 4501.*

D. Errors in the August 24, 1983 Unpublished Order of the United States Court of Appeals for the Seventh Circuit.

1. On pages 2 and 3 of the Appellate Court's August 24, 1983 Order, the Court states that Plaintiff "told the coaches to have the girls return their equipment to the lockers. As a result of Plaintiff's actions there were no lockers available when the visiting boys team arrived." This is an erroneous rendition of the facts in that, according to a letter written and signed by all of the coaches in the girls' athletic program and addressed to Defendant Neubauer, Appellant, "acted upon our (the coaches') request of not allowing visiting teams to use the women's athletic locker room." See 1a of the Appendix.

Further, the athletic director, having knowledge several days in advance that Appellant would not make the Women's Athletic Locker Room available to the visiting team, failed to act on the situation until after school hours the day of the basketball game in question when only two female teams and their coaches were present. Thus the Athletic Director created a situation wherein no single locker could be adequately emptied by the athletes, there being two to three girls from various teams per locker. Having been led by the athletic director to believe that Appellant had agreed to the use of this particular locker room, the coaches told the few athletes present to begin clearing their possessions out of their lockers. This resulted in chaos leadint to immediate complaints from some of the athletes to Appellant, who then discussed the situation with the coaches involved therein and the coaches in turn instructed their teams to stop removing their belongings from their lockers and to replace that which had already been taken out.

However, even had the few coaches who were present when the Athletic Director gave his directive, carried out said directive, the lockers could not have been made available to the visiting team since there were an insufficient number of athletes present to vacate the necessary lockers due to the Athletic Director's failure to rectify the matter in a timely manner.

2. On page 3 of it's Order, the Court of Appeals erroneously states: "Plaintiff claims that Neubauer (the principal) made this report (concerning the break-in) without speaking with her." In fact Defendant Neubauer stated under oath in his deposition that the "sole source" of his report was the Athletic Director, Daniel Candiano.

3. Also on said page 3, the Court of Appeals in discussing the list of students who lost items as the result of the Athletic Director's negligence, failed to state that Appellant had notified Defendant Neubauer in writing that she had given said list to another teacher in the building, the president of the Faculty Association which represented her and that Defendant Neubauer neglected to obtain said list from the aforesaid president.

4. In respect to Defendant School Board members hiring a male as Women's Sport Coordinator, the Court of Appeals failed to state that the individual was hired prior to Plaintiff's Grievance Procedure hearing.

5. The Court of Appeals on page 4 of its Order states: "Once it is clear that Plaintiff was not authorized to act as she did, while Candiano was authorized as he did, it becomes obvious that the district court was correct in holding that Defendants were entitled to summary judgement." To hold that Appellant was not authorized to protect the Title IX rights of her students by refusing an arbritrary, harrassing and unnecessary request by the Athletic Director, is to hold that Title IX is meaningless and unenforceable as to the rights of female athletes in Defendant's High School District No. 206.

Further, to hold that the Athletic Director is authorized to do as he did is to hold that said Athletic Director is authorized to needlessly chop off locks belonging to female

students and negligently fail to protect the girls' personal property inside the lockers when the said Athletic Director admits in his deposition that he was aware, at the time he broke into the girls' lockers, of at least two other locker rooms with a sufficient number of empty lockers in each, and when, according to the coach of the visiting team, the team buses unloaded at the entrance nearest these two available and secure locker rooms. Such a holding not only negates the female athlete's rights to equal locker room facilities under Title IX, but it also negates their rights to due process of the law regarding their own personal property under the Fifth and Fourteenth Amendments to the U.S. Constitution.

6. The question of whether or not the Athletic Director and Women's Sports Coordinator are similarly situated was wrongfully determined in the Court below. It would seem that the Court of Appeals erred in finding a lack of similarity in these two positions where both individuals are teachers, Appellant a physical education teacher and Candiano an English teacher, and both positions are administrative in nature dealing with the athletic program at Bloom Trail High School. The Women's Sports Coordinator is primarily responsible for the girls' athletic program and the Athletic Director is primatily responsible for the boys' athletic program. While not equivalently situated, the two positions are indeed similarly situated.

7. The United States Court of Appeals erred in affirming the United States District Court's dismissal of Appellant's procedural due process cause of action in that Judge Marovitz dismissed Appellant's procedural due process claims contrary to the Supreme Court's holding in *Cooley v. Board of Education*, 453 f.2d 282 and *Board of Regents of State Colleges v. Roth*, 408 U.S. 564, in which the Supreme Court, citing *Connell v. Higgenbotham*, 403 U.S. 207, stated "the principal proscribing summary dismissal from public employment with hearing or inquiry required by due process' also applied to a teacher recently hired without tenure or formal contract, but nonetheless with a clearly implied promise of continued employment." The Supreme Court in that case went on to state that "college

professors and staff members dismissed *during the terms of their contracts have interests in continuing employment that are safeguarded by due process."* In the instant case Appellant, a tenured teacher, had held her job under contract as Women's Sports Coordinator for four years and certainly had an interest in continued employment as Women's Sports Coordinator which should have proscribed her summary dismissal from that position in the middle of the school year without a hearing or inquiry, *which dismissal will most likely bar Plaintiff from an administrative career in the future.*

In *Cooley v. Board of Education*, 453 f 2d 282, the Court held "a peremptory, mid-term dismissal without notice of reasons *and* an opportunity *meaningfully* to be heard with regard thereto, presents an aggregate of facts so inherently suspect that, in the absence of significant countervailing considerations, the nature of the individual interest at stake demands the traditional procedural protection of the Due Process Clause of the 14th Amendment."

VI. Constitutional Provisions, Statutes and Court Rules Involved

U.S. Const., Amend V

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, *nor be deprived of life, liberty, or property, without due process of law;* nor shall private property be taken for public use, without just compensation.

U.S. Const., Amend XIV

Section 1. All persons born or naturalized in the United States and subject to the jurisdiction therof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Title IX of the Education Amendments of 1972, 20 U.S.C. Sec. 1681

(a) No person in the U.S. shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.

(c) For purposes of this chapter an education institution means any public or private preschool, elementary or secondary school . . .

VII. Statement of the Case

The facts of this case have been ascertained under oath in all the depositions taken to date, and these facts are as follows: a) Plaintiff, a physical education teacher and athletic team coach, had been Women's Sports Coordinator for four years; b) the Athletic Director on January 26, 1979 requested Plaintiff to have her female athletes remove their belongings from nineteen lockers in the overcrowded Women's Athletic Locker Room; c) Plaintiff refused; d) There were at least two other locker rooms in the building with more than nineteen empty lockers in each, both were situated near the entrance actually used by a visiting boys' basketball team and both afforded direct access to and from the team buses and the field house, bypassing concession stand area; e) The visiting team had to walk across the entire field house to get to the girls' athletic

locker room which had a crowded concession stand outside of one of its two doors and a crowded field house outside of the other door thus in case of disruptive crowds the visiting team would have been trapped in the Women's Athletic Locker Room, rendering it an extremely unsafe locker room for the visiting team; f) On the evening of January 30, 1979 the Athletic Director, without consulting with the school principal, chopped off nineteen locks in the Women's Athletic Locker Room and negligently failed to protect the students' personal belongings within the lockers resulting in a loss of $396.00 worth of personal property; g) The school principal, Defendant Neubauer, relied on the Athletic Director who broke into the lockers as the sole source of his February 5, 1979 report into the incident of the break-in of the girls' lockers;h)The Superintendent, Defendant Carrabine, though he knew that the Athletic Director was the primary source of Defendant Neubauer's report, fired Plaintiff from her administrative position on February 6, 1979, failing to make any independent investigation into the matter, even after he was presented with conflicting testimony; i) None of the Defendant School Board Members investigated the incident, even though conflicting facts were presented to them; j) The Defendant School Board Members hired a male as Women's Sports Coordinator subsequent to Appellant's Grievance Procedure request and prior to the Grievance Procedure hearing; k) the Grievance Procedure hearing was strictly limited to contract matters and in no way. reviewed the reasons for Appellant's job termination or the break-in of the nineteen lockers; and l) The Defendant School Board Members upheld Appellant's termination without a meaningful hearing and without an investigation into the matter.

VIII. Legal Precedent

According to *Tampa v. Board of Directors*, 633 f2d 1309 (12/80, 9th Circuit), the criteria set forth in the Supreme Court's decision in *McDonnel Douglas Corp. v. Green*, 411 U.S. 792 provide a useful guide to Plaintiff's burden of proof in a 42 U.S.C. Sec. 1981 or 42 U.S.C. Sec. 1983 cause

of action.[1] The criteria established in McDonnel Douglas, supra, are as follows:

1. Plaintiff must develop a prima facie case by establishing

   (a) That she is a member of a protected class;

   (b) That she was discharged; and

   (c) That there was disparate treatment from which the court can infer a causal connection between the basis and the discharge.

2. Following Defendants' assertion of a nondiscriminatory reason for the discharge, Plaintiff then has the burden of proving, by a preponderance of the evidence in a 42 U.S.C. Sec. 1983 case[2], that the reason proferred by the Defendants was in fact a pretext for sex discrimination.[3]

Appellant, Alexis Kneeland, has clearly established a prima facie case pursuant to the holding in McDonnel Douglas Corp v. Green case by means of deposition testimony.

To further exemplify the relationship between Title VII and 42 U.S.C. Sec. 1983, which is the cause of action in the present case, the court in Grano v. Dept. of Development of City of Columbus, supra at footnote 2, held that a Plaintiff who alleges disparate treatment by a state employer is bringing essentially the same claim under Title VII as under Section 1983, and similarly if there was no discriminatory intent, there cannot be liability under either Title VII on the disparate treatment theory or Section 1983.

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[1]See also *Sabol v. Synder*, 524 f.2d 1009

[2]*Grano v. Dept. of Development*, 637 f.2d 1073 (1980, 6th Circuit).

[3]*Board of Trustees of Keanne College v. Sweeney*, 439 U.S. 24: *Powell v. Syracuse Univ.*, 580 f.2d 1150 (1978).

The courts have recognized that "direct evidence of discrimination is virtually impossible to produce[4]. The use of "comparative evidence, crucial to most disparate treatment cases[5], is based on the concept of "Similarly situated" persons[6]. Thus, according to the decision in *Long v. Ford Motor Co.*, supra at footnote 27, of (a) persons of one race, sex or ethnic group receive different treatment from persons of another race, sex or ethnic group who are otherwise similarly situated, and (b) there is no adequate, nonpretextual explanation for the different treatment, then it is reasonable to infer that race was a factor in the disparate treatment.

In the case at hand, Appellant, the Women's Sports Coordinator of Bloom Trail High School was similarly situated to one Daniel Candiano, the Athletic Director of Bloom Trail High School, in that each were and are teachers and each were administrators in the inter-scholastic athletic program. Plaintiff was also the head coach for two teams and a gym teacher, while Candiano, an English teacher had no further connection to the athletic program. Plaintiff exercised her administrative responsibility for the Women's Athletic Program by denying a visiting basketball team occupied locker space when available lockers were located in safer, more accessible locker rooms in the building. In acting to save the female athletes from the unnecessary inconvenience of emptying their lockers at the whim of the Athletic Director, Appellant did, according to a letter sent from the women's athletic program coaches to the school principal[7], act in the best interests of the athletes, the program and the coaches. Daniel Candiano, on the other hand, exercised his responsibility for the welfare of the women athletes, including their Title IX right to equal locker facilities, by

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[4]*Gates v. Georgia Pacific Corp.*, 326 f. Supp. 397

[5]*East v. Romine, Inc.*, 518 f.2d 332

[6]*Long v. Ford Motor Co.*, 496 f.2d 500

[7]Plaintiff's deposition Exhibit 11

chopping off nineteen locks belonging to the women athletes and by negligently failing to properly secure the personal possessions found in those nineteen lockers[8]. Daniel Candiano chose to chop off the aforesaid locks on the east side of the building when he could easily have met the visiting team at the west entrance where they in fact entered Bloom Trail High School and escorted that visiting team to a locker room, also located on the west side of the school building, which had safe access to the fieldhouse and the team buses without the necessity of going through a concession stand area, and which also had vacant lockers.

For chopping off girls' locks and negligently failing to secure the girls' possessions, Daniel Candiano was *not* punished. For refusing with complete backing from her coaches, to carry out a capricious, arbitrary and discriminatory demand which would have infringed on her students' rights, Plaintiff was fired. The disparate treatment inherent therein along sexual lines is blatant.

Statistics have often been used as an aid in establishing discriminatory intent[9].

In McDonnel Douglas, supra, the court specifically held that "statistics as to Defendants' employment policy and practice may be helpful to a determination of whether Defendants conformed to a general pattern of discrimination against blacks." And in *Eubanks v. Pickens - Bond Const. Co.*, 635 f. 2d 1341, the court stated that "a gross statistical disparity may be evidence of discrimination." In the case at hand, 7 out of 11 coaches of women's teams are men, while no coaches of men's teams are women at Bloom Trail High School. Also a man was hired as Women's Sports Coordinator after Plaintiff was fired.

One critical factor in determining the existence of purposeful discrimination is whether or not the discharged employee was given repeated warnings and an opportunity

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[8]Letter signed by former student, Jeanna C. Apponi and dated 12/17/80: Defendants' Deposition Exhibit 7

[9]*Officers for Justice v. Civil Service Comm'n.*, San Francisco, 395 f. Supp. 378 (1975); *Gilmore v. Kansas City Terminal Railway Co.*, 509 f.2d 48 (1978).

to improve[10]. Another commonly relied upon factor is the existence of a hearing and full investigation. In *Cooley v. Board of Education Forest City School Distrct*, 453 f. 2d 282 (1972, 8th Circuit), the discharge was overturned, in a Section 1983 suit, for lack of a hearing despite no such requirement in state law.

In the present case, Appellant was given no warnings at all, nor was there a hearing, outside of specific contractual grievances, nor was there an investigation outside of the Neubauer report which is a mere record of Daniel Candiano's statements, hardly an unbiased investigation into the incident in which the said Daniel Candiano chopped off nineteen students' locks. Since not one of the Defendants ever investigated to determine the true nature of, and culpability for, the break-in of nineteen girls' lockers, it would be impossible for any of the Defendants to honestly label Plaintiff's actions as "insubordination" or anything else. Thus such a label, used as a reason for Plaintiff's job termination, must be construed as nothing more than a pretext for sex discrimination.

An employer's deviation from its normal patterns and practices is frequently determinative of discrimination as in *Lowry v. Whitaker Cable Co.*, 348 f. Supp. 202.

It seems extremely unlikely, in the present case that chopping off locks, when other locker rooms with vacant lockers were safe, secure and more accessible to a visiting basketball team, would be tolerated in the absence of a female scapegoat.

In the realm of damages, the court in *Monell v. Dept. of Social Services*, 436 U.S. 658 (1978), held that "municipalities may be sued under Section 1983 for both damages and punitive relief and a suit against individuals in their official capacities stands[11]. Thus all of Appellant's prayed for damages are allowable under Section 1983 through well established legal precedent.

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[10] *Williams v. Hyde County Board of Education*, 490 f.2d 1231.

[11] See also *League of Academic Women v. Regents of the Univ. of California*, 343 f.2d 636; *Johnson v. Railway Agency, Inc.*, 421 U.S. 454; and *Bradshaw v. Zoological Society of San Diego*, 569 f.2d 1066 (1978).

In conclusion, Appellant has satisfied the criteria set forth in *McDonnel Douglas Corp., v. Green*, supra, by establishing a prime facie case in that 1) as a female, she is a member of a protected class; 2) she was discharged; and 3) there was disparate treatment along sexual lines afforded to Plaintiff, who was fired for living up to her responsibilities in refusing a whimsical and discriminatory order which would render unequal locker room facility use to the athletes in the women's athletic program; in contrast with the treatment afforded to the Athletic Director, Daniel Candiano who was in no way punished for chopping off nineteen girls' locks and negligently failing to secure the personal property contained in the nineteen lockers, resulting in a substantial amount of lost or stolen property.

There being no hearing or investigation into the incident involving the chopped locks and subsequent discharge of Plaintiff, no warnings given to Plaintiff, gross statistical disparity in the numbers of women and men coaches in the athletic programs at Bloom Trail High School, including the fact that a man was hired as Women's Sports Coordinator after Plaintiff was fired, but while Plaintiff's grievance procedure was still pending, the facts of this case, according to a wealth of legal precendent as applied to Section 1983, establish, through the depositions alone, the existence of sex discrimination, by a preponderance of the evidence, in the dismissal of Plaintiff as Women's Sports Coordinator.

CONCLUSION

Wherefore, it is respectfully submitted that this Court has jurisdiction of this appeal under 42 U.S.C. 1983; Title IX of the Education Amendments of 1972, 20 U.S.C. 1681; the due process clauses of the Fifth and Fourteenth Constitutional Amendments; and the equal protection clause of the Fourteenth Constitutional Amendment in relation to the questions presented in appropriate manner due to the above stipulated errors of the Court below.

Respectfully submitted,

SYLVIA K. SMITH
Attorney For Appellant

SYLVIA K. SMITH
Attorney at Law
1628 Sylvan Court
Flossmoor, IL 60422
(312) 799-7110

Certificate of Service.

SYLVIA K. SMITH, a member of the Bar of the United States Supreme Court, whose entry of appearance in this cause is being contemporaneously filed with the Clerk of the United States Supreme Court, being first duly sworn and placed upon her oath states that forty copies of the Jurisdictional Statement addressed tothe Clerk of the U.S. Supreme Court, Washington D.C. 20543 and three copies of the Jurisdictional Statement addressed to the Clerk of the United States Court of Appeals for the Seventh Circuit, 219 S. Dearborn, Chicago, IL 60604 were deposited on November 21, 1983 in a U.S. Post Office or mail box with first-class postage and three copies of the Jurisdictional Statement were personally served to an employee of David Kula, counsel of record for all ten Defendants, at said counsel's office, Scariano, Kula & Associates, P.C., 1450 Aberdeen, Chicago Heights, IL 60411, pursuant to Rule 28.3 of the Rules of the Supreme Court of the United States. The names and addresses of the ten Defendants who were served through their attorney as above stipulated are as follows:

Bloom Township High School District No. 206
West 10th Street and Dixie Highway
Chicago Heights, Illinois 60411

Marion Baron
3725 Park Avenue
Steger, Illinois 60475

Richard Carrabine
1222 Shilling Avenue
Chicago Heights, Illinois 60411

Dorothy Dill
334 Patricia Drive
Chicago Heights, Illinois 60411

Bruce Green
125 North Floyd Lane
Chicago Heights, Illinois 60411

Warren Kurth
342 West 16th Street
Chicago Heights, Illinois 60411

Frank Nehnevay
22945 Lahon Road
Chicago Heights, Illinois 60411

Eugene Neubauer
259 West 16th Place
Chicago Heights, Illinois 60411

Paul Rietweld
21930 Woodlawn Avenue
Chicago Heights, Illinois 60411

Douglas Troiani
450 Grosvenor Place
Chicago Heights, Illinois 60411

SYLVIA K. SMITH

Sworn to before me this
15th day of November, 1983.

Inelda Munoz
Notary Public

Inelda Munoz
Notary Public, State of Illinois
No.....
Qualified in the County of Cook
Terms Expires September 24, 1985

BLOOM TOWNSHIP HIGH SCHOOL

February 26, 1979

Mr. Neubauer:

This letter is being written in regard to the dismissal of Ms. Alexis Kneeland as the Women's Sports Coordinator at Bloom Trail High School. We feel that Ms. Kneeland acted in the best interest of the girls' athletic program and the coaches. Ms. Kneeland made the stand that she did, not only because she felt that it was right, but also she knew that is what the coaches and women athletes insisted upon. She acted upon *our* request of not allowing visiting teams to use the women's athletic locker room.

Ms. Kneeland has done a tremendous job for the program, coaches, and athletes. Her qualifications, dedication, interest, and concern for the program and women athletes should be reconsidered. The program has grown and benefited under her direction and needs to continue under her influence. In looking at Ms. Kneeland's past record as Women's Sports Coordinator for 3 years, we feel she has done an outstanding job for the total program. Therefore, we cannot understand how her recent decision should have caused her to be relieved of her duties without taking into account the program, the coaches, and the athletes.

Raymond Moritz-*Basketball*
Pam Wallace-*Softball/Volleyball*
Emily M. Willis-*Tennis*
Joan Camble-*Swimming*
Joyce Peleky-*Track*
Pat Moore-*Gymnastics*
Julius Baldridge-*Basketball*
Susan L. Carr-*Track*
Joe Mark-*Gymnastics*
Donald E. Denhm-*Badminton*
D. Filips-*Volleyball*

June 25, 1979

Mrs. Y. Alexis Kneeland
18526 Meadow Lane
Hazel Crest, IL 60429

Dear Mrs. Kneeland:

This matter having been advanced to the Board Level pursuant to Article III, Section 3(A), and the Board of Education having convened to consider the presentation of your grievance on Monday, June 11, 1979, all members of the appropriate Faculty Association committees who desire to being present, and your attorney, Ms. Sylvia K. Smith being present at that time and place, the Board of Education considered your presentation, both oral and written, and have decided that the SUBJECT GRIEVANCE BE AND IS HEREBY DENIED.

Although the Board of Education is not required to state the reasons for its decisions on grievances, the Board will nonetheless respond to several of the issues which have been raised in your grievance materials. The following enumeration of reasons or statements of positions is by no means exhaustive, and the Board of Education does not hereby waive the right to raise any other applicable reasons or arguments at a later time if necessary.

As you are aware, the grievance procedure to the collective bargaining agreement between the Board of Education of Bloom High School District 206 and the Bloom Township High School Faculty Association defines a grievance as a

> "Complaint by a teacher, group of teachers or the Association that there has been a violation, misinterpretation or misapplication *of the provisions of this agreement.*"

The only proper subject of a grievance pursuant to the collective bargaining agreement is an alleged violation of the contract itself. To the extent that the grievance of March 23, 1979 cites provisions of the Illinois School Code, Code of Conduct for Members of School Boards, Code No. 3, Individual Contract Salary Notice dated January 31, 1979, and Title IX of the Federal Guidelines for Schools, these matters are irrelevant to the grievance process, and are not within the scope of the grievance procedure. Again, only an alleged violation of the specific provisions of the contract are within the scope of the grievance procedure and the Board of Education has therefore considered those contract provisions cited in your March 23, 1979 grievance.

Inasmuch as neither the grievant nor her representatives could explain the rationale behind citing Section 1, Recognition and Savings, Paragraph (A) and inasmuch as the Board of Education can determine that this provision has not been violated in any manner, this clause clearly has not been violated by any office or agent or employee of the School District. Likewise, Article II, Board Association Relationships - Managment Rights, and Article IV, Working Conditions, Section 2, *Academic Freedom*, and Section 21 of Miscellaneous Provisions, Paragraph (C) are likewise inapplicable, and have in no way been violated by the Board of Education of any of its officers, agents or employees. The Board of Education simply cannot violate its own Management Rights clause. The Management Rights Clause is a recognition by the Association that certain rights are reposed in the Board of Education, and the Management Rights Clause is in no way an exhaustive enumeration of the rights and powers possessed by the Board of Education. Article IV, Academic Freedom, is not intended to apply to cases of direct refusal of an employee to follow the request or directions of his or her superior. As you are aware, the job description for Women's Athletic Coordinator states that "the women's athletic coordinator will have responsibility for the girls' interscholastic program, and will be responsible to the athletic director

for authorization an supervisions." In sum, the contractual provisions cited in your grievance of March 23, 1979, and any and all other materials which have been presented to the Board in its meetings with you on April 16, 1979 and June 11, 1979 have disclosed no violation of the collective bargaining agreement and the subject grievance is therefore denied.

Sincerely yours,
Paul R. Rietveld, President
Board of Education District 206

Marion Baron, Secretary
Board of Education District 206

cc: Sylvia K. Smith
cc: Bloom Township High School Faculty Association

United State Court of Appeals
For the Seventh Circuit
Chicago, Illinois 60604

Submitted July 15, 1983

August 24, 1983

Before

Hon. Walter J. Cummings, Chief Judge
Hon. Wilbur F. Pell, Jr., Circuit Judge
Hon. William J. Bauer, Circuit Judge

Alexis Kneeland
Plaintiff-Appellant,

vs.

No. 81-2127*
Bloom Township High School District 206;
Marion Baron, Richard M. Carrabine,
Dorothy Dill, Bruce Green, Warren Kurth,
Frank Nehnevay, Eugene Neubauer,
Paul Rietveld, Douglas Troiani,
Defendants-Appellees,

Appeal from the United
States District Court
for the Northern
District of Illinois,
Eastern Division

No. 79 C 3601
Abraham L. Marovitz, *Judge*

ORDER

Plaintiff originally filed suit alleging that her dismissal as Women's Sports Coordinator of Bloom Trail High School was _____

*After preliminary examination of the briefs, the court notified the parties that it had tentatively concluded that oral argument would not be helpful to the court in this case. The notice provided that any party might file a "Statement as to Need of Oral Argument." *See* Rule 34(a), Fed. R. App. P.; Circuit Rule 14(f). Such a statement was filed by appellant. Upon consideration of that statement, the briefs, and the record, the request for oral argument is denied and the appeal is submitted on the briefs and record in violation of Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681. The district court granted defendants' motion to dismiss because plaintiff failed to allege that defendants were the recipients of federal funds and because Title IX does not prohibit employment-related sex discrimination in federally funded education programs. *Kneeland v. Bloom Trail High School District No. 206*, 484 F. Supp. 1280 (N.D. Ill. 1980). Plaintiff amended her complaint, alleging violation of her right to due process and equal protection as guaranteed by the Fourteenth Amendment and 42 U.S.C. § 1983. Plaintiff also asserted several state law claims. The district court dismissed the due process and state law claims, but held that plaintiff had stated a cause of action under the equal protection clause. The court subsequently granted defendants' motion for summary judgment on the equal protection claim.

I. FACTS

Plaintiff is a tenured physical education teacher at Bloom Trail High School. During the 1978-79 academic year she also held several extra-curricular positions, including that of Women's Sport Coordinator. Plaintiff's employment as sports coordinator was governed by a "contract salary notice." This document contained a job description that provided that "the Women's Sports Coordinator will have responsibility to the athletic director for authorization and supervision." The contract also specifically stated that "temporary extra duties employment may be terminated at any time at the sole discretion of the Board."

Plaintiff's immediate superior was the athletic director at Bloom Trail, Daniel Candiano. Candiano was responsible for planning and organizing the use of Bloom Trail's athletic facilities. In this capacity Candiano instructed plaintiff that approximately 19 lockers would be needed to accommodate a visiting boys basketball team for one evening, and that he had decided that lockers currently used by some of the feamle athletes were to be used. Previous games between Bloom Trail team and this visiting team ahd drawn large, disruptive crowds and Candiano thought that the girls' locker room would be the safest place to house the visiting team. Plaintiff refused to complay with this instruction, partly because she questioned Candiano's assessment of the safety of the girls' locker room and partly because she felt that the girls should not be inconvenienced for a boys team.

On the day of the game plaintiff did not instruct the girls to vacate their lockers. Several other coaches, who had also been instructed by Candiano to make lockers available, told the girls to remove their belongings. When plaintiff discovered this she told the coaches to have the girls return their equipment to the lockers. As a result of plaintiff's actions there were no lockers available when the visiting boys team arrived. Confronted with this situation, Candiano cut off 19 of the girls' locks and removed their belongings, which were left unattended in the locker room. The school replaced the locks, but did not replace items that were lost by the girls.

Principal Neubauer prepared a report concerning the incident and submitted it to Superintendent Carrabine. Plaintiff claims that Neubauer made this report without speaking with her, and we will assume that this is what happened. *1/* Neubauer concluded that the incident was the result of a lack of cooperation, but did not draw any conclusions as to the propriety of Candiano's and plaintiff's behavior. Based upon Neubauer's report, Carrabine removed plaintiff from her position as Women's Sports Coordinator. Carrabine indicated that he thought that plaintiff's behavior amounted to insubordination.

After she was fired from her position as Women's Sports Coordinator plaintiff submitted a list of items lost by girls whose lockers had been opened by Candiano. Neubauer requested a list of the girls' names, but plaintiff insisted upon giving the list to a fellow teacher. Neubauer did not request that this teacher provide him with the list, and plaintiff ignored Neubauer's requests for the list. The result of this pettiness was that the students were never reimbursed for the missing items.

Plaintiff filed a grievance with the District's Board of Education pursuant to the collective bargaining agreement then in effect between the teachers and the District. While plaintiff's grievance was pending the District posted a notice seeking applications for Women's Sports Coordinator. Plaintiff's union discouraged its members from applying while plaintiff's grievance was pending, and as a result only one person applied for the position. That applicant, a male, was hired. Plaintiff then began this litigation.

1/ The report refers to a conference with plaintiff, and appears to include plaintiff's purported justification for her actions. However, as there is no conflict over the facts leading to the removal of the locks, but only as to the reasons, we do not think that the source of the information is important. Plaintiff similarly claims that the district court made a number of other errors in its rendition of the facts. We have examined these contentions and do not believe that any of the disputed facts are material.

II. Sex Discrimination

The district court held that defendants were entitled to summary judgment on plaintiff's claim that her right to equal protection had been violated. The crux of the court's opinion was that there was no genuine issue as to whether plaintiff was the victim of sex discrimination. If, in fact, defendants were entitled to summary judgment on this claim, then they were also entitled to judgment on plaintiff's Title IX claim even if the court erred in dismissing it for the reasons stated in its opinion.

Plaintiff claims that she has made out a prima facie case of sex discrimination by demonstrating that she was fired for her actions while Candiano was not. She further claims that the charge of insubordination was nothing more than a pretext for sex discrimination. That the school hired a male to replace her, and that htere are more men in coaching positions than women, are additional facts that plaintiff claims support her allegation.

Plaintiff's claim rests on the assumption that she and Candiano were similarly situated, so that sex discrimination may be inferred from the disparate treatment accorded them. Plaintiff also asserts that she had the right to refuse Candiano's order, and that such refusal cannot be the basis of a charge of insubordination. There is nothing in the record to support either of these claims. Candiano was plaintiff's immediate supervisor and empowered to determine how the athletic facilities were to be used. That Candiano was an English teacher while plaintiff was a physical education teacher does not somehow equalize their positions. Given plaintiff's refusal to acknowledge that Candiano was authorized to decide how school athletic facilities would be used, it is not surprising that plaintiff believed herself to be the sole guardian of the female athletes' rights. A moral imperative, however, is not a legal right, and plaintiff's position as sports coordinator did not give her the right to refuse Candiano's request simply because she disagreed with it. While plaintiff's concern for the rights of her students is commendable, her methods in preventing what she sees as an infringement of these rights is not.

Once it it clear that plaintiff was not authorized to act as she did, while Candiano was authorized to act as he did, it becomes obvious that the district court was correct in holding that defendants were entitled to summary judgment. Disparate treatment is only proof of discrimination if the parties are similarly situated, which was not the case here. That the school hired a male replacement is irrelevant as he was the only applicant for the position. Furthermore, we agree with the district court that the disparity in the number of women and men coaches is not

enough to make out a case of sex discrimination in this case. See, e.g., *Grano v. Department of Developmet*, 637 F.2d 1073, 1078 (6th Cir. 1980). As plaintiff has failed to produce any facts that support her claim of sex discrimination we need not determine whether the purported rationale for filing plaintiff was merely a pretext. We do note, however, that there is no reason on record before us to doubt that plaintiff was fired because of her blatant insubordination.

III. Due Process

Plaintiff also contends that her removal as Women's Sports Coordinator violated her right not to be deprived of property or liberty without due process of law. In an unpublished opinion the district court examined this claim and determined that plaintiff had neither a property interest nor a liberty interest in her position as sports coordinator, and that therefore no process was due.

The right to due process depends upon the existence of either a property interest or a liberty interest. Plaintiff claims to have a property interest in continued employment as sports coordinator. To establish this property interest plaintiff must show "more than an abstract need or desire for" the position, and "more than a unilateral expectation of it." *Board of Regents v. Roth*, 408 U.S. 564, 577 (1972). Rather, plaintiff must establish a "legitimate claim of entitlement to it." *Id.* Such a legitimate claim of entitlement must stem from a source independent of the Constitution, such as state law. *Id.* When state law grants a property interest, while at the same time defining what procedures will be employed in determining that right, the procedural limitations must be respected. *Arnett v. Kennedy*, 416 U.S. 134, 153.

On the undisputed facts of this case plaintiff has not demonstrated such a property interest. Although plaintiff's position as physical education teacher was protected by tenure, her position as sports coordinator was not. The contract salary notice that set forth the terms of plaintiff's employment explicitly stated that plaintiff

could be terminated at any time at the discretion of the board. This situation is analogous to that presented in *Dano v. Peterson*, 421 F. Supp. 950 (N.D. Ill. 1976), in which plaintiff was reassigned from an administrative position to regular classroom duties, with a reduction in pay. After examining Illinois law, the district court concluded that plaintiff did not have a property interest in employment as an administrator, but rather only an interest in continued employmnt in a position he was qualified to fill. Similarly, in this case state law does not create a legitimate claim to continued employment as a sports administrator, and plaintiff's interest in continued employment as a physical education teacher has not been affected. As in *Danno*, simple loss of an administrative position does not infringe a protected property interest. As recognized by Judge Flaum in *Danno*, to hold otherwise would be to interfere in the "multitude of personnel decisions that are made daily" by the state's schools. 421 F. Supp. at 954. Finally, if there had been any doublt as to the merits of plaintiff's due process claims, such doubts are put to rest by a recent deicison of this court in *Smith v. Board of Education of Urbana School District No. 116*, 708 F.2d 258 (1983).

IV. Contempt Motion

Plaintiff sought, through a motion to hold Candiano in contempt, to have the court find Candiano guilty of perjury. The court declined to do this, and plaintiff appeals. Plaintiff has cited no authority for the position that she may invoke the criminal law as a plaintiff in a civil case, or for the even more novel proposition that she may appeal the court's decision not to find a witness guilty of perjury—a procedure that is not even available to the Government in a criminal case. We find no support for plaintiff's position and affirm the district court.

Conclusion

We affirm the grant of summary judgment for defendants on plaintiff's equal protection claim, and

affirm the dismissal of plaintiff's other sex discrimination claims. We affirm the holding of the district court that plaintiff did not plead a claim under the due process clause, and affirm the district court's denial of plaintiff's contempt motion.

END OF DOCUMENT